No. 80-795

IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and the INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

REPLY BRIEF

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REPLY BRIEF

INTRODUCTION

Respondents' brief notably abandons one of the primary arguments they had advanced up to this point and substantially rejects the basis of the Minnesota Supreme Court's Opinion. That is, they are no longer claiming that peripatetic solicitation is a unique religious practice. Resp. Br. at 19-20, 47. Before that and other substantive issues are addressed, however, there are several statements or implications in the brief of Respondents (hereinafter "Krishnas" or "ISKCON") which should be clarified.*

First, it is inaccurate to state that the Krishnas have not sought to distribute flags, flowers, maps and other "greeting gifts." See Resp. Br. at 2, fn. 7 and 3-4. They agreed only not to solicit money for such items. Stip. of Facts at para. 11, J.A. (Joint Appendix) 33-34. The record, in fact, establishes that at the 1977 Minnesota State Fair Krishnas distributed *and* sold these products, the latter activity in violation of a temporary restraining order. J.A. 29-30, 53-57.

Second, the Krishnas suggest that there is minimal evidence that they engaged in fraudulent, deceptive or disorderly conduct at the 1977 Fair, because there was no evidence of criminal arrests and prosecutions. Resp. Br. at 2, fn. 7. The absence of such evidence does not establish their premise because of the fact that Petitioners (State Fair) have enforced the booth rule (Rule 6.05) by evicting violators from the fairgrounds rather than by criminal prosecutions. Michael Heffron Affidavit at para. 15, J.A. 25. See also Resp. Br. at 37, fn. 27.

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* Shortly before the submission of this brief for printing, Petitioners received telephone requests from certain organizations seeking consent to their filing briefs amicus curiae in support of Respondents. Since those briefs had not been received at the time of printing, however, it is not possible to address any new arguments which may be raised therein.

There are also repeated suggestions in the Brief of Respondents that ISKCON is a new, financially burdened religious organization whose members innocently go about their work of collecting barely enough funds for ISKCON to survive. The innuendoes of naivete and innocence are refuted by their misconduct in this case and in cases like *International Society for Krishna Consciousness v. Barber*, No. 77-CV-328 (N.D. N.Y., filed Aug. 25, 1980), Brief For The State of New York, amicus curiae, at A.15, 22-32. In addition, the implication of subsistence funding, even if relevant to this case, is questionable. It is not based on the record of this or any other case and, in fact, is contrary to common sense.[1]

Finally, ISKCON gratuitously offers its own views as to the priorities of purposes for the booth rule. It states that the primary rationale of the regulation is the prohibition of speaker-initiated contacts and the secondary purposes are the prevention of fraud and maintaining of order. Resp. Br. at 28, 35. To the contrary, the State Fair does not assign significantly greater importance to any of the governmental interests advanced by the rule.

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[1] Respondent Joseph Beca testified that during five or six days of the 1977 Minnesota Fair he personally collected about $900. Beca Deposition at 10, 23. Since 17 or 18 Krishnas solicited funds during the same period, it is reasonable to conclude that approximately $15,300 to $16,200 were collected during less than one week at only one location. *Id.* Indeed, it has been estimated that ISKCON has collected $75,000,000 in the United States in the last decade, enabling it to purchase "10 large farms, a $3 million-a-year publishing business, square blocks of real estate . . ., a chain of vegetarian restaurants" and to build a 5,000-square-foot temple made of 63 tons of marble and 3 tons of carved Indian teakwood on a 2,000-acre farm in West Virginia. Los Angeles Times, February 15, 1981, at 1, col. 1, and 13, col. 1.

ARGUMENT

I. ISKCON'S NOW UNEQUIVOCAL CONCESSION THAT SANKIRTAN DOES NOT DISTINGUISH IT FROM OTHER RELIGIONS UNDERCUTS THE MINNESOTA SUPREME COURT'S DECISION, STRENGTHENS THE POLICE POWER INTERESTS OF THE STATE, AND ESTABLISHES THAT THE BOOTH RULE IS NO MORE THAN A PLACE AND MANNER RESTRICTION.

A. The Krishnas Concede They Are Not Entitled To Greater First Amendment Protections Than Other Religious And Political Groups.

Except for a one-sentence response to a question at oral argument below, the Krishnas now concede for the first time that their practice of peripatetic Sankirtan does not make their religion unique for purposes of First Amendment analysis. Resp. Br. at 19-20 and 47. Thus, they now seek to have the booth rule invalidated with respect to all non-commercial organizations.

This is an important admission. It recognizes that to treat ISKCON more favorably than other religions, political parties and similar organizations on the basis of ISKCON's tenets is to violate the First and Fourteenth Amendments' rights of those groups. See Brief For Pet. at 17-21. Sankirtan does not set ISKCON apart from other groups with similar rights to disseminate their views, distribute books or solicit funds.

This concession also directly disavows the majority opinion of the Minnesota Supreme Court. That opinion was plainly founded on the court's inferential conclusion that Sankirtan was unique to ISKCON. J.A. 64 and n. 7, 67. In fact, the Court

stated that even though the booth rule significantly furthered substantial state interests, it was unconstitutional as applied to members of ISKCON. *Id.*; see also dissenting opinion of Todd, J., J.A. 72 ("the majority appears only to focus on the impact of ISKCON's activities on this problem."). Therefore, without its inference that Sankirtan compelled peripatetic conduct different from that of other religions, even the majority of the Minnesota Supreme Court would not have invalidated the booth rule. The Krishnas are now making an argument which is not supported by the decision below.

B. Under ISKCON's Present Theory The Admitted Substantial Public Purposes Served By The Booth Rule Are Greatly Magnified.

As noted above, the Minnesota Supreme Court expressly acknowledged that the booth rule serves substantial governmental interests. Majority Opinion, J.A. 64. *See also,* Heffron Affidavit, J.A. 45, which was not contested at the trial court. In summary they are the protection of the constitutional rights of competing concessionaires/exhibitors and fair patrons, the prevention or control of fraud and deception by roving solicitors and the promotion of order and safety on the fairgrounds. These interests are described in the Brief For Petitioners at 18-32.

There is no need here to reiterate the details of those public purposes served by the booth rule, but it is important to recognize that the problems to which the rule is directed would be substantially magnified under the Krishnas' current position. That is, if all religious, political, news and similar organizations were entitled to an exemption from the booth rule the predictable instances of fraudulent solicitations, disorder, con-

gestion and annoyances of fair patrons and participants would surely multiply.[2]

There are already at least 40 other religious, political and news media groups renting booth space at the Minnesota Fair. J.A. 46 at para. 10 and 49-52. Of course, there are numerous other organizations like them who would surely solicit and distribute materials at the fair if they knew they would be allowed to do so peripatetically. At first blush, it may have been tempting for the Krishnas to argue that giving only them a special exemption to the booth rule would not significantly impair the State Fair's ability to accomplish its police power objectives on the fairgrounds. That claim, however, certainly cannot be made in the face of exemptions for at least 40 and perhaps two or three times that many other organizations. If each group had only 10 members (ISKCON had 17 or 18 members at the 1977 Fair) conducting roving solicitations and distributions on 40-45 acres of the fairgrounds, that could mean at least 400 and perhaps close to 1,000 peripatetic vendors. Crowd control, safety protection and apprehension of fraudulent solicitors would be practically impossible. See, Brief For Petitioners at 22-32.

ISKCON's own arguments reinforce the conclusion that many, if not all, other religious groups and political parties

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[2] ISKCON's suggestion that only a small fraction of political or religious solicitations would be fraudulent is speculative at best. Resp. Brief at 43. The records in this case; ISKCON v. Barber, *supra*; and ISKCON v. State Fair of Texas, 461 F. Supp. 719 (N.D. Texas 1978) belie this claim. The occurrences of fraud are bound to increase if all non-commercial solicitations were permitted peripatetically. Not only would the number of organizations with solicitors multiply, it is likely that there would be an increase in the number of persons who claim to represent certain groups but who, in fact, are not in any way affiliated with such organizations.

would truly take advantage of any booth rule exemption. The Krishnas' claims that peripatetic conduct is much more effective and financially productive than being confined to a booth would not be lost on their competitors. Resp. Br. at 23-25.[3] This fact is strongly supported by the brief on behalf of *amici curiae* American Civil Liberties Union, Minnesota Civil Liberties Union and the National Council of Churches.

Consequently, there is every reason to believe that numerous groups and persons with identical religious and free speech rights would demand exemption from the booth rule. Since the State Fair staff is not qualified to judge the legitimacy of their religious or political bases, they would have no choice but to acquiesce. The resulting pockets of congestion, harassment of fair patrons and commercial booth operators and incidences of fraud would greatly exacerbate an already challenging situation.

C. The Krishnas Implicitly Recognize That The Booth Rule Is No More Than A Place And Manner Restriction.

By agreeing that they are not entitled to special, individualized exemption from the booth rule, the Krishnas necessarily reinforce the applicability of the "reasonable time, place and manner" test of *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972). Since the booth rule is solely a restriction on the place and manner of solicitations and distributions, it should be judged as to whether it is reasonable under the surrounding circumstances.[4]

ISKCON tries to avoid this test by making a bootstrap argument that the booth rule is totally preclusive of speech, press

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[3] Particularly during election year fairs, the demands on the State Fair by political candidates for special treatment are aready great.

[4] The Minnesota Supreme Court has already concluded that the rule promotes substantial public purposes. J.A. 64.

and religious activity and, therefore, should be judged by a stricter standard. Resp. Br. at 7-8, 26. Not only does this mark the first time the Krishnas have proffered that claim, it is erroneous.[5]

The Krishnas' argument that the booth rule is totally preclusive is based on their reasoning that it prohibits the Krishnas completely from certain areas *within* the fairgrounds. Resp. Br. at 7-8. That reasoning is not only strained, it is inconsistent with cases dealing with total prohibitions of First Amendment rights. Under ISKCON's view, there could never be a reasonable time, place and manner restriction, since every such restriction necessarily is preclusive in some respect.[6] There are inevitably always some areas and times within any forum that will be off limits for certain activities. This fact does not make consonant restrictions totally preclusive. If the State Fair had denied access to the entire fairgrounds, it would clearly be acting in a totally preclusive manner. In con-

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[5] ISKCON also implies that the booth rule is directed to the content of speech and religious beliefs. Resp. Br. at 9, 26. This claim is purely a makeweight argument that is directly contrary to the Stipulation of Facts which expressly states the parties' agreement that the booth rule does not discriminate against ISKCON or other groups "for any reason, including their religious or political views." Stip. of Facts at para. 22, J.A. 36.

The Krishnas also suggest that the booth rule may chill exercise of activities other than fund-raising solicitations. Resp. Br. at 37-40. This claim is not supported by the Minnesota Supreme Court's decision and has been rejected by this Court in Broadrick v. Oklahoma, 413 U.S. 601 (1973) (prohibition on soliciting "any assessment, subscription, or contribution for any political organization, candidacy or other political purpose" held to be neither vague nor overbroad.) *Id.* at 606. As this Court stated, "it is all but frivolous to suggest that [this prohibition] fails to give adequate warning of what activities it proscribes. . . ." *Id.* at 607.

The cases cited by the Krishnas are not to the contrary. Unlike Broadrick, neither In Re Primus, 436 U.S. 412 (1978) (proscription on solicitation of clients for political purposes) nor Thomas v. Collins, 323 U.S. 516 (1945) (regulation of union organizing) involved fund-raising.

[6] Compare the anti-noise ordinance which was upheld in Grayned v. City of Rockford, 408 U.S. 104 (1972).

trast, the State Fair allows everyone *into* the fairgrounds, rents booth space and, in addition, gives everyone the same opportunities to talk to all willing listeners as they walk about the open grounds.

Cases relied on by ISKCON in support of its claim that the booth rule is totally preclusive are inapposite. For example, the local ordinance struck down in *Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85 (1977) absolutely forbid the placement of "For Sale" or "Sold" signs even on the lawns of private homes, except model homes, everywhere within the municipal limits. Likewise, in *Schneider v. State,* 308 U.S. 147 (1939) and *Lovell v. City of Griffin,* 303 U.S. 444 (1938) this Court faced regulations which were completely prohibitive. In *Schneider* the ordinance denied all access to a potential audience by prohibiting distribution, with or without a booth, of handbills in all streets, parks or similar areas. The ordinance in *Lovell* was almost identical, except that it prohibited distributions everywhere within the city unless a discretionary permit were obtained first. There is simply no comparison between the regulations in these cases and the booth rule, which merely establishes the place(s) within the fairgrounds where sales, solicitations and distributions may occur.[7]

It follows that the booth rule, being non-content oriented and non-preclusive, must be judged under the "time, place and manner" test. It passes this test, even as forumulated by ISKCON, which asserts that the State Fair must show a com-

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[7] ISKCON implies without argument that the space rental fee for a booth is possibly suspect, Resp. Br. at 25. The rental fee is not and has never been an issue in this case. The rental of booth space is a fixed charge based upon the size and location of the booth and is related to the cost of property rental, electricity, water and other services. This fee is indisputably constitutional under Cox v. New Hampshire, 312 U.S. 569 (1941) ($300 fee for parade license upheld as administrative expense).

pelling public interest for the rule,[8] that the rule must be narrowly drawn to serve those interests[9] and that it must allow ample alternative channels of communication.[10] Resp. Br. at 26-27.

The reasonableness of the booth rule has been addressed in the Brief For Petitioners at 11-12 and 37-39 and is further supported by some of the cases cited by ISKCON. In *Wolin v. Port Authority of New York*, 392 F.2d 83 (2d Cir. 1968), *cert. denied*, 393 U.S. 940, the court of appeals expressly stated that leafleting within the Port Authority bus terminal could be restricted to "specific places within the building where the right of expression may be exercised."[11] *Id.* at 94. The court in *Wolin* struck down a blanket prohibition against *all* leafleting in the terminal. See also, *Chicago Area Military Project v. Chicago*, 508 F.2d 921 (7th Cir. 1975), *cert. denied*, 421 U.S. 992 (approved lower court order restricting leafleting to certain areas within an airport) and *United States v. Boesewetter*, 463 F. Supp. 370, 372 (D.D.C. 1978) (dismissed prosecutions for violations of federal regulation totally precluding sales and distributions inside the Kennedy Center but stated that a booth-type arrangement within the Center would be a reasonable time, place and manner restriction). *See also, ISKCON v. Evans*, 440 F. Supp. 414, 424-25 (S.D. Ohio 1977) (fairgrounds not on a constitutional plane with open air parks or street corners).

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[8] The governmental interests are already established. Brief For Petitioners at 18-32; Minnesota Supreme Court Opinion, J.A. 64.

[9] The narrowness of the booth rule is addressed *infra* at Argument II.

[10] Adequate alternative means of communicating are available under the rule by virtue of its having no effect at all on oral communications and its permitting sales, solicitations and distributions of materials at a booth or booths on an equal basis with everyone.

[11] This statement in Wolin, *supra*, also shows the fallacy of the Krishnas' claim that a booth rule constitutes a total proscription of First Amendment rights.

II. THE BOOTH RULE IS A REASONABLE AND NARROWLY DRAFTED VEHICLE FOR SERVING ACKNOWLEDGED PUBLIC PURPOSES.

A. The Public Purposes Are Clear And Recognized By The Minnesota Supreme Court.

The Krishnas assert that because the booth rule does not expressly set forth all of its purposes as a part of its contents, it is somehow contitutionally infirm. Resp. Br. at 35-36. This claim is both illogical and contrary to the Minnesota Supreme Court's conclusion that the rule promotes substantial governmental interests.

If the Krishnas were correct on this issue, it would mean that every statute and regulation would be suspect if it did not explicitly spell out its public purposes. Legislative and administrative bodies should not be expected to express governmental interests which are obvious. It is generally sufficient if the decisions leading to the promulgation of a governmental regulation are adequately supported by any set of facts or objectives in existence at the time of enactment. *Petitioner v. Superior Court of Sonoma County*, 49 U.S.L.W. 4273, 4274 (March 23, 1981); *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715, 724 (1981); *United States v. Maryland Savings Share Ins. Co.*, 400 U.S. 4, 6 (1970); and *McGowan v. Maryland*, 366 U.S. 420, 426-27 (1961). Under this Court's decision in *Petitioner v. Superior Court of Sonoma County, supra* at 4274, "great deference" should be given to the Minnesota Supreme Court's finding that the State Fair booth rule furthers substantial governmental purposes. J.A. 64.

B. ISKCON's Suggested Less Restrictive Means For Achieving The Governmental Purposes Are Ineffective And Potentially Violative Of The First Amendment.

The Krishnas argue that the booth rule should be replaced with a system whereby the State Fair provides daily registration of all peripatetic solicitors, requires them to wear identification badges, limits the total number of solicitors and relies only on criminal prosecutions or rules expressly prohibiting fraud and deception for controlling fraudulent activities on the fairgrounds. Resp. Br. at 42-46.

The reasons why such alternatives are impractical are set forth in Brief For Petitioners at 27-29, 37-39. It is worth emphasizing, however, certain aspects of ISKCON's recommendations. The Krishnas' suggestion that the State Fair promulgate a separate rule against fraudulent solicitations and sales is unworkable and superfluous. Detection and prosecution of deceptive roving vendors and solicitors are practically impossible on a fairgrounds crowded with thousands of people who are, for the most part, strangers to each other. The problem of fraudulent sales and solicitations is at least two-fold. On one hand, this and other cases have shown that some members of religious organizations misrepresent their identities or products in order to collect money from unsuspecting persons. In addition, there are sales and solicitations by persons who identify themselves as agents of religious or political groups when, in fact, they have no connection whatsoever to any such organization. Again, this second aspect of the difficulty of policing fraudulent conduct will be amplified by the addition

of unlimited non-commercial groups throughout the fairgrounds.[12]

Furthermore, a system requiring the State Fair staff to set up special daily registrations for roving solicitors and vendors would be unworkable *and* probably violative of the religion clauses of the First Amendment itself. With perhaps dozens or scores of roving solicitors on the fairgrounds, it would not really be possible for the fair staff to know at any given time who were registered and who were not. They do not have nearly enough personnel to monitor such a system. Once the public becomes aware that roving vendors and solicitors are permitted on the fairgrounds, the fairgoers themselves would be of little help in determining whether they were properly registered and wearing accurate identification.

A registration system also would pose serious problems for the Fair in deciding whether all or only some of the applicants should be registered on given days. If even 25 to 40 religious and political groups demanded that 10 vendors each be permitted to roam the fairgrounds, the State Fair administration would be forced to become actively entangled in deciding how to keep the total number limited and who would be allowed to solicit peripatetically.

Even under ISKCON's own recommendation, the State Fair would have the right to place reasonable limits on the number of roving solicitors and vendors. That task would necessarily

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[12] Fraudulent sales at booths are much easier to control. It is easier to identify and locate the offender at a booth, and, as to those booth employees who leave the jurisdiction, the State Fair may suspend or revoke booth privileges. Moreover, the problem of a person falsely claiming to be a member of a particular group is substantially eliminated, since the imposter would have to solicit within the booth of the organization he or she falsely claims to represent.

lead to the State Fair's choosing among competing religions, political parties and news media. These demands would surely increase on weekends and days of good weather when attendance at the Fair rises and could lead to constitutional difficulty. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

Indeed, ISKCON's proposal would require the State Fair to establish the kind of regulatory system that this Court struck down in *Cantwell v. Connecticut*, 310 U.S. at 301-02 (1940). That is, the State Fair would be required to adopt a solicitation licensing program based upon a determination of whether or not proposed roving vendors and solicitors are agents of truly bona fide religions, political parties and news organizations. Not only is the State Fair unqualified to make those judgments, it could not permissibly do so under the First Amendment. The suggested registration system, therefore, is fraught with First Amendment violations.

III. THE BOOTH RULE EFFECTUATES A REASONABLE BALANCE BETWEEN THE RIGHTS OF SPEAKERS AND LISTENERS.

ISKCON attempts to detract from the reasonableness of the booth rule's restrictions by arguing that it allows only listener-initiated communications. Resp. Br. at 21-23, 28-35. That is not true.[13]

The booth rule creates, however, a reasonable balance between speaker-initiated and listener-initiated communications. It is recognition of the fact that as fairgoers move about the fair grounds they come in contact with sales and solicitation pitches from booth vendors. In such circumstances they then have the freedom to approach such booths to pursue their interests and respond to the "speaker."[14] They (the listeners) also have the freedom to ignore the speaker-initiated communications by walking away with the knowledge that the "speaker" will not follow them and harass them into leaving the fair or making a financial contribution. The booth rule also helps insure that donors and purchasers are not misled or intentionally deceived as to the identities and purposes of the organizations soliciting them.

It is true, of course, that the First Amendment authorizes the communication of unpopular views. That is not the real issue in this case, since the booth rule does not prevent or even

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[13] ISKCON concedes the weakness of its "listener-initiated speech" argument by acknowledging that fairgoers frequently are the subjects of communications started by booth-bound hawkers, Resp. Br. at 34. Thus, its claim that the booth rule erects a shield around each listener is mere hyperbole. Resp. Br. at 35.

[14] The claim that fairgoers would feel stigmatized by being seen going to a religious or political booth is preposterous. See, Brief Amici Curiae of American Civil Liberties Union, et al., at 23. That alleged fear does not seem to prevent fairgoers from going to the carnival "freak shows" and similar attractions.

limit such expressions. Throughout the fairgrounds pure speech may be initiated by anyone. Every person on the fairgrounds may initiate any conversation he or she desires, even on the subject of religious beliefs. The abuses and problems to which the rule and the fairgoers' complaints are directed are the peripatetic sales, solicitations and distributions.

It is suggested by the Krishnas that the State Fair's concern regarding harassment of fairgoers by roving solicitors, Brief For Petitioners at 21-23, is speculative and fanciful. Resp. Br. at 33-34. That argument also is betrayed by the record here and in other cases like *ISKCON v. Barber, supra.*

As a result of 5-6 days of peripatetic solicitations by the Krishnas at the 1977 Minnesota Fair, the State Fair received 234 complaints and five sworn affidavits directly relating to their activities. This is not speculation.

The annoyances and harassments of fair patrons would certainly multiply by the addition of other religions, political and news organizations engaged in roving activities. The booth rule, however, guards against such intrusions while striking a permissible balance as to the needs and interests of all speakers and listeners.

CONCLUSION

The Krishnas are not entitled to greater rights under or exemptions from the booth rule than any other religious, political or news organization. Since the rule is a reasonable restriction only on the place and manner of everyone's sales, solicitations and distributions equally and without any effect on pure speech rights, the State Fair respectfully requests this Court to reverse the decision of the Minnesota Supreme Court and to affirm the booth rule in all respects.

Respectfully submitted,

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